



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Charley Lookhart
State Treasurer
Austin, Texas

Dear Sir:

Opinion No. 0-1859

Re: Is a chattel mortgage covering all stock, crops, feed, farm implements, and all government rentals, parities, and subsidies, subject to the excise stamp tax levied by Article 7047e, Vernon's Annotated Civil Statutes, upon the registration of same by the County Clerk under the Registration Laws of this State?

By your letter of January 15, 1940, you submit for the opinion of this Department the following question, which we quote from your letter:

"If a mortgage covers all stock, crops, feed, farm implements, and all government rentals, parities, and subsidies, would the mortgage be subject to being stamped under the provisions of Article 7047e, Vernon's Annotated Statutes?"

Article 7047e, Vernon's Annotated Civil Statutes, levies an excise tax upon the privilege of registration under the Registration Laws of Texas of chattel mortgages, deeds of trust, mechanic's liens contracts, vendor's liens, and conditional sales contracts, and all instruments of a similar nature, securing obligations in excess of Two Hundred Dollars (\$200.00). This tax levy is general in its incidence, the only exception therefrom being the following:

". . . This section shall not apply to instruments, notes, or other obligations taken by or on behalf of the United States or of the State of Texas, or any corporation agency or instrumentality of the United States, or of the State of Texas

in carrying out a governmental purpose as expressed in any Act of the Congress of the United States or of the Legislature of the State of Texas, nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products or to livestock or farm implements, or an abstract of judgment. . ."

It is to be assumed that the chattel mortgage under consideration here secures an obligation in excess of Two Hundred Dollars (\$200.00), and is not executed in renewal and extension of a prior chattel mortgage, theretofore stamped under the Act, and is therefore subject to the terms of the statute and the tax levied thereby, unless it falls within the foregoing exemption. We do not believe the instant chattel mortgage falls within the scope of this exemption. Although the crop adjustment rentals, parities, and subsidies covered by the mortgage are paid to the mortgagor by the United States of America under the Agricultural Adjustment Act, through the medium of an instrumentality of the United States, for the purpose of carrying out a governmental purpose, nevertheless, the chattel mortgage itself does not fall within the category of "instruments, notes, or other obligations taken by or on behalf of the United States," so as to be exempt thereunder. The chattel mortgage in question merely evidences an attempt and purpose by and between private contracting parties to deal with benefit payments paid to the mortgagor by the United States under an Act of Congress. With such contractual relations the Government has no concern, and in fact, gives no recognition thereto, as indicated by the following regulation issued by the Department of Agriculture in Southern Region Bulletin, 301a, Revised, Section 13, sub. f:

"Any payment or share of payment shall be computed and made without regard to questions of title under State Law, without deduction of claims for advances and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor."

Having determined that no question of Federal immunity from State taxation is presented here, we now pass to a consideration of whether the subject chattel mortgage falls within the exemption of the Act running to "obligations or instruments secured by liens on crops and farms or agricultural products, or to livestock or to farm implements," despite the fact that it covers, or attempts to cover, other property than the foregoing, that is to say, crop adjustment rentals, parities, and subsidies, paid to mortgagor by the Federal Government, as

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above outlined. Conference Opinion No. 3061, of date June 17, 1939, directed to you, and prepared by Assistant Attorney General Glenn R. Lewis, furnishes a specific answer to this question in holding, substantially, that the inclusion in a chattel mortgage of property in addition to the property specifically mentioned in the above-quoted exemption, operated to remove such mortgage from the benefit of said exemption, and rendered same subject to this excise stamp tax on registration, if otherwise within the Act.

We accordingly advise that in our opinion the described chattel mortgage is subject to the excise tax levied upon the privilege of its registration by Article 7047e, Vernon's Annotated Civil Statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

/s/ Pat M. Neff, Jr.

By

Pat M. Neff, Jr.
Assistant

FMN:N

APPROVED FEB 1, 1940

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
opinion committee
By BWB
chairman